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JAN 28 1946
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO. 716

JAMES J. CLAYTON,
Petitioner

V.

THE STATE OF ALABAMA,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF FOR RESPONDENT

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BRIEF AND ARGUMENT FOR RESPONDENT

I.

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals of Alabama is reported as follows: *Clayton v. State*, 4th Div. 836, 23, So. 2d. 396; *Clayton v. State*, 4th Div. 836, May 15, 1945, opinion extended, application for rehearing overruled, 23 So. 2d. 396.

Petition for writ of certiorari in the Supreme court of Alabama was denied, *Ex Parte James J. Clayton*, 4th Div. 376, June 14, 1945, 23 So. 2d. 397. An application for rehearing in the Supreme Court of Alabama was overruled without opinion, *Ex Parte James J. Clayton*, 4th Div. 376, October 11, 1945, 23 So. 2d. 397.

II

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama, rendered on April 17, 1945, rehearing denied May 15, 1945, under the provisions of Section 237 (b) of the United States Judicial Code (28 USCA, § 344).

ISSUE

The only question presented by the petitioner is whether or not he was deprived of his liberty without due process of law in that the State used as evidence an admission allegedly procured by intimidation.

III

STATEMENT OF THE CASE

The petitioner was indicted for the offense of arson in Dale County, Alabama (R. 1). He was tried by a jury, found guilty and sentenced to imprisonment in the penitentiary for a period of two years (R. 31).

The testimony introduced in behalf of the State tended to show that James J. Clayton, a negro, was

seen by a police officer at or about 5 o'clock on the morning that an automobile was burned (R. 10). The petitioner was walking toward the automobile at the time, and when last seen was about one hundred yards from the car. Within about fifteen minutes the witness who observed the petitioner approaching the car returned to the automobile and found it in flames (R. 10).

Previous to the burning this same witness had seen a gallon jug of kerosene in the automobile, in a brown glass jug. The right front wheel of the automobile had no tire on it, and the rest of the wheels had old tires all of which were flat. (R. 12).

The State further introduced expert testimony tending to show that the interior of the automobile probably would not burn unless accelerated by some fuel, and that it was improbable that the battery or electrical system of the automobile could cause a fire. (R. 12, 13.) It was further established by the State that the petitioner bought a gallon of kerosene on the day preceding the fire. (R. 13.)

We now come to that part of the testimony where the State showed a statement or admission made by the petitioner. Zack Morris, witness for the State, who was a highway patrolman, after testifying that the tires on the automobile did not fit the tracks made when the automobile left the road, stated that the defendant made a statement to him. He further testifies:

"I did not, nor did anyone else, make any threats against the negro, offer him any reard, or abuse or mistreat him in any way.

"Mr. Wilkerson, a deputy sheriff, did not whip the negro, but slapped the negro after he practically made the statement. That was all that was done to him. He was impudent."

The court then allowed the witness to testify as to what statement petitioner had made. In substance, according to this witness' testimony, the statement was that the owner of the automobile, Mr. Pratt, had sent petitioner on an errand in the automobile, had told him that when he had completed the errand that petitioner should park the car on the outskirts of Ozark, Alabama, and take the tires off and if there was any kerosene left to leave it in the car. The statement further included the fact that the owner of the automobile, Pratt, told petitioner that he could have some of the tires. (R. 14).

On cross-examination, this witness testified that the statement was made in the late afternoon following the arrest of petitioner that morning and that he was slapped in the sheriff's office by Mr. Wilkerson, a deputy sheriff. His testimony further shows that the petitioner was put back in jail. The petitioner never admitted or confessed to the burning of the car. In substance the statement was: 1. He was using the car with the owner's consent, 2, that the owner had told him to leave the car out on

the side of the highway, 3, that the owner had told him to take the tires off the car, 4, that the owner had promised petitioner that he could have some of the tires, 5, that petitioner was told by the owner to leave the kerosene in the car. (R. 14, 15.)

The testimony further showed that the officer went to where the petitioner lived and found the tires as the petitioner had stated. (R. 16.)

The testimony of Roy Peters was substantially the same as that of Zack Morris (R. 16 and 17.) This witness who was present at the time the statement was made testified that no one mistreated the petitioner and no one offered him any reward and no one told him that it would be better to make a statement or do anything else. (R. 17.) Although this witness was present he does not recall that the petitioner was slapped. (R. 17.)

The State's witness, B. F. Craven, (R. 18) who was also present at the time the statement was made, testified that no one mistreated the petitioner, that the petitioner was not threatened or offered a reward to make the statement. This witness did testify, however, that the petitioner was slapped by Mr. Wilkinson, the deputy sheriff, some thirty minutes after the statement had been made. (R. 18.)

The testimony introduced in behalf of the petitioner tended to show that the petitioner left Ozark, Alabama, in the automobile of Mr. Pratt, that his

destination was Opelika, Alabama. He testified that he purchased the kerosene in order to clean a shoe repair machine, which belonged to Mr. Pratt. The petitioner further testified that shortly after leaving Ozark, he had trouble, and turned around and started back to Ozark; that one of his front tires went flat and he had to pull off the road. The petitioner then testified that he found some old tires in the back of the car and put them on the wheels and took the tires that were originally on the automobile to his room. The petitioner then introduced his defense of alibi by stating that he stayed in his room from approximately eleven on the night preceding the fire until the next morning about 5:30, after the fire (R. 20, 21.)

This testimony is corroborated by the witness Grady Ryals (R. 26.)

Rather than go into detail in petitioner's testimony as to how he was mistreated it is sufficient to say that he testified that all of the officers and persons present at the time he admitted his statement mistreated him, beat him, whipped him, and threatened him; that they did this at the jail and in the sheriff's office. (R. 21.)

Summarizing petitioner's own testimony, which can be compared to his statement as testified to by state's witness, the petitioner said: 1. That he was in possession of the car that was burned. 2. That Mr. Pratt had told him to get a gallon of kerosene,

but that it was purchased for the purpose of cleaning a machine. 3. That Mr. Pratt had told him to leave the kerosene in the automobile. 4. That Mr. Pratt, the owner of the automobile, had told petitioner that if he had any trouble with the automobile to leave it by the side of the road, and 5. That if he had to leave the automobile by the side of the road to remove the tires. (R. 20, 21).

In rebuttal several witnesses for the State, who were present at the time petitioner made his statement, testified that the petitioner was not mistreated in any way. (R. 26 and 27.)

IV

ARGUMENT

THE PETITIONER WAS NOT DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW BY THE ADMISSION INTO EVIDENCE OF HIS CONFESSION OR ADMISSION.

It is the purpose of respondent's brief and argument to show to the court that the use by the State of the admission made by the petitioner cannot be said to have deprived the petitioner of a fair hearing or a fair trial as guaranteed to him by the Fourteenth Amendment. We shall demonstrate that the use of the statement of petitioner in his trial did not amount to a deprivation of liberty without due pro-

cess of law within the meaning of the principles announced by this Court in the decisions of *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682; *Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716; *Ward v. Texas*, 316 U. S.547, 86 L. Ed. 1663, *Ashcraft v. Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

1. THERE WAS A SATISFACTORY SHOWING THAT THE ADMISSION WAS VOLUNTARY.

Redd v. State, 69 Ala. 255;

Daniels v. State, 243 Ala. 675, 11 So. 2d. 756, 761;

Vernon v. State, 239 Ala. 593, 196 So. 96;

Beckham v. State, 100 Ala. 15, 14 So. 859.

2. A CONFESSION OR ADMISSION IS NOT INVOLUNTARY WHEN PHYSICAL ABUSE HAS NO CAUSAL RELATION TO THE CONFESSION OR WHEN SUCH ABUSE IS SUBSEQUENT IN POINT OF TIME THERETO.

Beckham v. State, 100 Ala. 15, 14 So. 859, 860;

Reedy v. State, 246 Ala. 363, 20 So. 2d. 528, 532;

Connors v. State, 95 Wis. 77, 69 N. W. 981;

Thomas v. State, 58 Fla. 122, 51 So. 410;

Andrews v. People, 33 Colo. 193, 108 Am. St. Rep. 76, 79 Pac. 1031;

Lind v. State, 137 Ark. 92, 207 S. W. 47;

Bell v. State, 177 Ark. 1034, 9 S. W. 238;

24 *A. L. R.*, page 712.

3. WHEN AN ADMISSION IS NOT THE SOLE OR EVEN THE PRINCIPAL EVIDENCE IN THE CASE, AND THERE IS A SATISFACTORY SHOWING THAT THE ADMISSION WAS VOLUNTARY, THE DETERMINATION OF THE TRIERS OF FACT SHOULD BE SUSTAINED, UNLESS SUCH DETERMINATION IS SO LACKING IN SUPPORT IN THE EVIDENCE THAT TO GIVE IT EFFECT WOULD WORK THAT FUNDAMENTAL UNFAIRNESS WHICH IS AT WAR WITH DUE PROCESS.

Brown v. Mississippi, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682;

Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716;

Ward v. Texas, 316 U. S. 547, 86 L. Ed. 1663;
Lisbenda v. California, 314 U. S. 219, 86 L. Ed. 166.

1. There was a satisfactory showing that the admission was voluntary.

At the outset it should be stated that the statement made by the petitioner and used against him on trial was not a confession, but was at most an admission in the nature of a confession tending to connect him with the crime of arson. The petitioner never admitted having burned the automobile or participating in the burning. These facts of necessity were established by evidence independent of his statements. It must be remembered that the petitioner in his admission merely stated that he was told to leave the car out on the highway and that he could remove the tires and have part of them. When this testimony was offered by the State the proper predicate under the Alabama Law was laid. Zack Morris testified that no threats were made to the petitioner nor was he mistreated nor were any rewards or inducements held out to the petitioner. Other State's witnesses also testified to substantially the same facts and therefore laid the predicate for the admission of petitioner's statement. The trial judge, therefore, was authorized under the Alabama law to admit the statement in evidence after a satisfactory showing that it was voluntary. *Redd v. State*, 69 Ala. 255.

It then became the duty of the jury to determine the weight and credibility of the statement, taking into consideration the evidence introduced by the petitioner that the statement was induced by threats and violence. *Redd v. State*, 69 Ala. 255; *Daniels v. State*, 243 Ala. 675, 11 So. 2d. 756, 761; *Vernon v. State*, 239 Ala. 593, 196 So. 96; *Beckham v. State*, 100 Ala. 15, 14 So. 859.

In the latter case it was stated by the Alabama Court:

> "All confessions are prima facie involuntary and they can be rendered admissible only by showing that they were voluntary and not constrained, and this should be made satisfactorily to appear."

It is contended, therefore, that even applying the more strict rules relating to confessions the admission of the petitioner was properly admitted into evidence in the Alabama trial court since several of the State's witnesses unmistakably testified that at the time the statement was made the petitioner was not threatened, was not abused and was not mistreated in any way.

In passing upon the competency of the statement the trial judge was authorized to use his discretion as to whether the statement had been made voluntarily or not. Certainly it cannot be said that this finding is not supported by substantial and con-

vincing evidence. The State's witnesses not only testified on their direct examination that the petitioner was not threatened or abused, but after the petitioner had testified that he was beaten and abused by each person present the officers were again put upon the stand and all denied the petitioner's testimony. It should be concluded, therefore, that the petitioner was not denied a fair and impartial trial because his statement was admitted into evidence since there was substantial testimony proving that the admission was voluntary.

2. A confession or admission is not involuntary when physical abuse has no causal relation to the confession or when such abuse is subsequent in point of time thereto.

Conceding for the sake of argument that the petitioner was slapped by the deputy sheriff Wilkinson, it is contended that there was no causal relation between the slapping and the statement made by petitioner. It is further contended that the record shows that this mistreatment occurred after the statement was made.

B. F. Craven testified that the slapping took place at least thirty minutes after the statement was made. Zack Morris, however, testified that it was made at about the same time the admission was completed. Other witnesses testified that no slapping occurred. It is not clear, therefore, from the record whether there was any slapping at all, but

if there was, the testimony shows that it was after the statement.

The record further indicates that the slap was administered, not to procure a statement from the petitioner but because he was impudent. (R. 14,) and because he "kept talking back" to Mr. Wilkinson. (R. 18.)

Since all of the State's witnesses testified that there were no threats to, or abuse of the petitioner in connection with the confession the only conclusion is that the slap was administered for a reason other than to induce the petitioner to make a statement and that it was administered subsequent to the statement. This being the case, it cannot be said that the admission was involuntary.

In *Beckham v. State*, 100 Ala. 15, 14 So. 859, 860, in speaking of confessions, the court said:

> "Its exclusion rests on its connection with the inducement; they stand to each other in the relation of cause and effect. If it is apparent that no such connection exists, there is no reason for the exclusion of the evidence."

See also:

Reedy v. State, 246 Ala. 363, 20 So. 2d. 528, 532.

Further cases upon this proposition are collected in 24 *A. L. R.*, page 712, the general rule being

that where an assault is committed upon a prisoner for reasons other than eliciting a confession, the assault does not necessarily show that the statement made was involuntary and hence inadmissible. On the contrary, an explanation of the reason for the assault may show that it had no connection with the petitioner's incriminating statement and that the statement was therefore voluntary. See *Connors v. State*, 95 Wis. 77, 69 N. W. 981; *Thomas v. State*, 58 Fla. 122, 51 So. 410; *Andrews v. People*, 33 Colo. 193, 108 Am. St. Rep. 76, 79 Pac. 1031.

It is submitted, therefore, that even if the petitioner was slapped the same occurred because he was impudent and because he "talked back to" a deputy sheriff.

In arguing this proposition we do not indorse the action of the sheriff, nor advocate the slapping of prisoners. Such action is, of course, reprehensible, but if it has no connection with a statement later used in evidence and is not the inducement for the statement it cannot be said that this independent assault, having no connection and being unrelated to the statement, deprived the petitioner of a fair trial.

It is needless to point out to this Court that if this alleged assault upon the petitioner took place subsequent to the statement the assault would have no bearing upon the voluntary character of the statement, there being no causal connection. *Beckham*

v. State, 100 Ala. 15, 14 So. 859; *Reedy v. State*, 246 Ala. 363, 20 So. 2d. 528. See also *Lind v. State*, 137 Ark. 92, 207 S. W. 47; *Bell v. State*, 177 Ark. 1034, 9 S. W. 2d. 238.

3. When an admission is not the sole or even the principal evidence in the case, and there is a satisfactory showing that the admission was voluntary, the determination of the triers of fact should be sustained, unless such determination is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.

We have attempted to demonstrate to the court that the trial court in Alabama admitted the confession into evidence under established rules of Alabama procedure, and that the voluntary character of the statement was supported by substantial evidence; and further that the weight and credibility of the statement was a question for the jury under Alabama law. That the statement was properly introduced in evidence and submitted to the jury was affirmed by the decision of the Alabama Court of Appeals (see opinion of the Court of Appeals, R. 32, 33). The Supreme Court of the United States, however, does not make its decision upon the law of evidence in Alabama, but determines for itself whether or not the use of a confession by the State amounts to an unfair trial.

Under the decisions of this Court in the case of *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461,

80 L. Ed. 682, *Chambers v. Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716; *Ward v. Texas*, 316 U. S. 547, 86 L. Ed. 1663, the following rule may be stated. Where a conviction rests solely or principally upon a confession and where it appears without conflict that such confession was obtained by any means amounting to compulsion, the rights of the individual convicted by the use of such confession, under the due process clause of the Fourteenth Amendment to the United States Constitution have been violated and the Supreme Court of the United States will in an appropriate proceeding, brought for that purpose, set aside such conviction and any judgment resulting therefrom.

Plainly the facts in this case do not call for the operation of this rule. In the first place, there was never a confession of guilt. There was a statement which may, perhaps, be called an admission of certain facts connecting the petitioner with the crime. In the second place, the evidence is in conflict as to whether or not any threats at all were used to obtain this statement. In the third place, the statement was not the sole evidence in the case and it may safely be said that it was not the principal evidence in the case against the petitioner. Testimony as to the contents of the statement consistently showed that he denied his guilt. The State of Alabama proved its case by evidence other than the statement of the petitioner. His statement, whether voluntary or involuntary, added little to the State's case. The petitioner, when he took the witness stand, testified

to substantially the same facts contained in his statement.

This Court, therefore, is confronted with a far different state of facts than those shown in the cases enumerated above. The rule that should be applied in this case is stated in *Lisbenda v. California*, 314 U. S. 219, 86 L. Ed. 166. In that case the evidence was also conflicting as to whether threats and abuse procured the confession. In that case it was admitted that an officer slapped the petitioner's face when the petitioner had made an offensive remark about his wife. In that case this Court said:

> "There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.
>
> "Here judge and jury passed on the question whether the petioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a

denial of due process; this notwithstanding the issue submitted was not *eo nomine* one concerning due process. Furthermore, in passing on the petitioner's claim the Supreme Court of the state found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats, or implied promises of leniency. . . . . ."

We believe that the decision in *Lisbenda v. California*, supra, should be followed in this case rather than those cases reviewed at the outset of this argument. The rule above quoted would require this Court to deny the petition for writ of certiorari.

It is submitted, therefore, that the writ should be denied.

Respectfully submitted,

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On The Brief.

CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Hon. John C. Walters, Troy, Alabama, attorney for petitioner on this the ..... day of January, 1946.

WILLIAM N. McQUEEN,

Attorney General of Alabama,

Counsel for Respondent.